

## Department of Labor

## 2909.406-3

shall discussions be conducted with a listed offeror during a period of ineligibility, unless the HCA determines in writing that there is a compelling reason to do so and the Assistant Secretary for Administration and Management approves such action.

### **2909.405-1 Continuation of current contracts.**

(a) At the time an option is being exercised, contracting officers must review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. If a contractor or significant subcontractor is identified in the listing, the contracting officer must make a written determination either to proceed or to terminate the contract, and must explain the rationale for the decision. In accordance with FAR 9.405-1, contracting officers may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred, unless it is determined that termination of the contract is in the best interest of the Government. The contracting officer must make such determination in writing, after consulting with the contracting officer's technical representative and legal counsel. The determination must be approved by the HCA.

(b) Contracting activities must not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the HCA states, in writing, the compelling reasons for renewal or extension and the Assistant Secretary for Administration and Management approves such action.

### **2909.406 Debarment.**

#### **2909.406-1 General.**

(a) The Senior Procurement Executive is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406-2, using the procedures in 2909.406-3.

(b) The Senior Procurement Executive is authorized to make an exception regarding debarment by another agency debarring official in accordance with the conditions in FAR 9.406-1(c).

### **2909.406-3 Procedures.**

(a) *Investigation and referral.* Whenever a DOL employee knows a cause for debarment, as listed in FAR 9.406-2, the appropriate HCA affected must be notified. The contracting officer must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for debarment to the Senior Procurement Executive.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Senior Procurement Executive must initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406-3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at an informal fact-finding proceeding as required by FAR 9.406-3(b)(2)(i). The proceeding must be conducted by the Office of Administrative Law Judges and must be held at a date and location reasonably convenient to the parties concerned. Subject to the provisions of 29 CFR part 18, entitled "Rules Of Practice And Procedure For Administrative Hearings Before The Office Of Administrative Law Judges", the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings must be made available to the contractor under the conditions in FAR 9.406-3(b)(2)(ii).

(d) *Decision and notice.* The Senior Procurement Executive shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406-3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406-4 and 9.406-5. Notice of the decision must be provided to the contractor and any affiliates involved

## **2909.407**

in accordance with the procedures in FAR 9.406-3(e).

### **2909.407 Suspension.**

(a) The Senior Procurement Executive is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407-2, using the procedures in 2909.406-3.

(b) The Senior Procurement Executive is authorized to make an exception, regarding suspension by another agency suspending official under the conditions in FAR 9.407-1(d).

### **2909.407-1 General.**

(a) *Investigation and referral.* Whenever a DOL employee knows of a cause for suspension, as listed in FAR 9.407-2, the appropriate HCA affected must be notified. The HCA must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for suspension, to the Senior Procurement Executive.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Senior Procurement Executive will initiate suspension by taking the actions listed in FAR 9.407-3(c) and advising the contractor of DOL's rules under this subpart.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407-3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at informal proceedings, as required by FAR 9.407-3(b)(2)(i). Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed suspension.

(d) *Suspension decisions.* The Senior Procurement Executive must make a final decision on suspension as prescribed in FAR 9.407-3(d). Notice of the decision must be provided to the contractor and any affiliates involved, in accordance with the provisions in FAR 9.407-3(d)(4).

## **48 CFR Ch. 29 (10-1-05 Edition)**

### **Subpart 2909.5—Organizational and Consultant Conflicts of Interest**

#### **2909.503 Waiver.**

(a) The Senior Procurement Executive is delegated authority by the Assistant Secretary for Administration and Management to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's best interest.

(b) Requests for waivers must be made by the HCA to the PE. Each request must include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR 9.5 to be waived.

(c) In making determinations under this subpart the Senior Procurement Executive must request the opinion of the Office of the Solicitor, Division of Legislation and Legal Counsel.

#### **2909.506 Procedures.**

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest and requests higher level review as referred to in FAR 9.506, the matter must be referred to the Office of the Solicitor, Associate Solicitor for Legislation and Legal Counsel, and the Director, Division of Acquisition Management Services.

(b) Referrals must be made by the HCA concerned and include the contracting officer's decision and the position of the prospective contractor.

## **PART 2910—MARKET RESEARCH**

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### **2910.002 Procedures.**

(a) In accordance with FAR 6.302-1(c), purchase descriptions must not specify a product, or specific feature of a product, peculiar to a manufacturer unless they are justified to the contracting officer in writing by the office initiating